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Establishment of the International Criminal Court

Letter dated 9 July 2002 from the Permanent Representative of Denmark to the United Nations addressed to the Secretary-General

I have the honour to transmit, annexed hereto, the text (English, French and Spanish versions) of the common position of the Council of the European Union (unofficial consolidated version)[1] on the International Criminal Court.

I should be grateful if you would have the text of this letter and its annex circulated as a document of the fifty-seventh session of the General Assembly, under agenda item 161, "Establishment of the International Criminal Court".

(*Signed*) Ellen Margrethe Løj
Permanent Representative of Denmark to the United Nations

* A/57/50/Rev.1.

[1] This is an unofficial consolidated version. Authentic texts of Council Common Positions 2001/443/CFSP of 11 June 2001 and 2002/474/CFSP of 20 June 2002 on the International Criminal Court are published in the *Official Journal of the European Communities*, Nos. L 155 of 12.6.2001, p. 19, and L 164 of 22.6.2002, p. 1, respectively.

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Annex to the letter dated 9 July 2002 from the Permanent Representative of Denmark to the United Nations addressed to the Secretary-General

[Original: English, French and Spanish]

8 July 2002

EUROPEAN UNION

COUNCIL COMMON POSITION ON THE INTERNATIONAL CRIMINAL COURT

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COUNCIL COMMON POSITION

on the International Criminal Court

(unofficial consolidated version)

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

1. The consolidation of the rule of law and respect for human rights, as well as the preservation of peace and the strengthening of international security, in conformity with the Charter of the United Nations and as provided for in Article 11 of the EU Treaty, are of fundamental importance to, and a priority for, the Union.

2. The Statute of the International Criminal Court, hereinafter "the Statute", adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 and ratified or acceded to by 69 States and will enter into force on 1st July 2002.

3. All Member States of the European Union have ratified the Statute.

4. The principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the Union.

5. The serious crimes within the jurisdiction of the International Criminal Court, hereinafter "the Court", are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

6. The Union is convinced that compliance with the rules of international humanitarian law and human rights is necessary for the preservation of peace and the consolidation of the rule of law.

7. The Final Act of the Rome Conference has established a Preparatory Commission mandated to elaborate proposals for adoption by the Assembly of States Parties, including instruments needed for the practical functioning of the Court.

8. The agreement reached on the Rome Statute represents a delicate balance between different legal systems and interests.

9. The Union recognises that the principles and rules of international criminal law embodied in the Rome Statute should be taken into account in other international legal instruments.

10. The Union is convinced that universal adherence to the Rome Statute is desirable for the full effectiveness of the International Criminal Court and, to this end, considers that initiatives to enhance the acceptance of the Statute are to be encouraged, provided they are consistent with the letter and spirit of the Statute.

11. The effective establishment of the Court and the implementation of the Statute requires practical measures that the European Union and its Member States should fully support.

12. On 16 April 2002 the Council took note of a resolution on the Court approved by the European Parliament on 28 February 2002 which, inter alia, called for the adoption of an action plan to follow-up Common Position 2001/443/CFSP.

13. The said Action Plan was finalised on 15 May 2002 and may be adapted as appropriate.

14. Article 7 of Council Common Position 2001/443/CFSP [1] states that the Council shall review the Common Position every six months.

15. In view of the forthcoming entry into force of the Statute, a number of steps have to be taken before the Court can function effectively, a period during which the European Union should do its utmost to promote the early establishment of the Court, in accordance with the relevant decisions of the Preparatory Commission and the Assembly of States Parties ("the Assembly"),

[1] OJ L 155, 12.6.2001, p.19.

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The establishment of the International Criminal Court, for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction, is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as contributing to the preservation of peace and the strengthening of international security, in accordance with the purposes and principles of the Charter of the United Nations.

2. The objective of this Common Position is to support the early establishment and effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute.

Article 2

1. In order to contribute to the objective of the widest possible participation in the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

2. The Union and its Member States shall contribute to the world-wide ratification and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments. In furtherance of the objectives of this Common Position, the Union shall co-operate as necessary with other interested States, international institutions, non-governmental organisations and other representatives of civil society.

3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective. They shall contribute when requested with technical and, where appropriate, financial assistance to the legislative work needed for the ratification and implementation of the Statute in third countries. States considering to ratify the Statute or to cooperate with the Court shall be encouraged to inform the Union of difficulties encountered on that path.

4. In implementing this Article, the European Union and its Member States shall co-ordinate political and technical support for the Court with regard to various States or groups of States. To that end, country-specific or region-specific strategies shall be developed and used where appropriate.

Article 3

1. The Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. In particular, they shall support the early creation and operation of an appropriate planning mechanism, including an advance team of experts, in order to prepare the effective establishment of the Court.

2. Member States shall co-operate to ensure the smooth functioning of the Assembly in all respects, including the adoption of documents recommended by the Preparatory Commission. In particular, Member States shall make every effort to ensure that highly qualified candidates are nominated, inter alia by encouraging transparent nomination procedures for judges and prosecutors in accordance with the Statute. They shall also endeavour to achieve that the composition of the Court as a whole reflects the criteria set forth in the Statute.

3. The European Union and its Member States shall consider contributing in an appropriate and equitable manner to the costs for measures needed before the first period's budget of the Court becomes effective and the Court is fully operational. The Union, after adoption of a budget of the Court by the Assembly of States Parties, shall encourage States Parties to promptly transfer their assessed contributions in accordance with the decisions taken by the Assembly.

4. The European Union and its Member States shall endeavour to support as appropriate the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court.

Article 4

The Council shall, where appropriate, co-ordinate measures by the European Union and Member States for the implementation of Articles 2 and 3.

Article 5

The Council notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures.

Article 6

During negotiations of the instruments of and in carrying out the work provided for, Resolution F of the Final Act of the Rome Diplomatic Conference of Plenipotentiaries, Member States shall contribute to the early finalisation of these instruments and shall support solutions that are consistent with the letter and the spirit of the Rome Statute, taking into account the need for ensuring the widest possible participation thereto.

Article 7

The Council shall review this Common Position every six months.

Article 8

This Common Position shall take effect from the date of its adoption.

Article 9

This Common Position shall be published in the Official Journal.

For the Council

The President